

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT FOR THE  
WESTERN OF WASHINGTON  
AT SEATTLE

ELICIA KNEADLER,

Plaintiff,

V.

## AUBURN SCHOOL DISTRICT

Defendant.

No. 20-CV-01008 MJP

## **STIPULATION AND PROTECTIVE ORDER**

## **1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

## 2. "CONFIDENTIAL" MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: Medical records of Plaintiff including those included in files held by health care providers as well as current or former employers; Private information

KEATING, BUCKLIN & McCORMACK, INC., P.S.

ATTORNEYS AT LAW  
801 SECOND AVENUE, SUITE 1210  
SEATTLE, WASHINGTON 98104  
PHONE: (206) 623-8861  
FAX: (206) 223-9423

1 contained in personnel files of Plaintiff and witnesses; and Information contained in District  
2 files that is subject to the Family Education Rights and Privacy Act (FERPA).

3 **3. SCOPE**

4 The protections conferred by this agreement cover not only confidential material (as  
5 defined above), but also (1) any information copied or extracted from confidential material;  
6 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
7 testimony, conversations, or presentations by parties or their counsel that might reveal  
8 confidential material. However, the protections conferred by this agreement do not cover  
9 information that is in the public domain or becomes part of the public domain through trial  
10 or otherwise.

11 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

12       4.1     Basic Principles. A receiving party may use confidential material that is  
13 disclosed or produced by another party or by a non-party in connection with this case only  
14 for prosecuting, defending, or attempting to settle this litigation. Confidential material may  
15 be disclosed only to the categories of persons and under the conditions described in this  
16 agreement. Confidential material must be stored and maintained by a receiving party at a  
17 location and in a secure manner that ensures that access is limited to the person authorized  
18 under this agreement.

19       4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the designating party, a receiving party may  
21 disclose any confidential material only to:

22               (a)     the receiving party’s counsel of record in this action, as well as  
23 employees of counsel to whom it is reasonably necessary to disclose the information for this  
24 litigation;

25               (b)     the officers, directors, and employees (including in-house counsel) of  
26 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the  
27 parties agree that a particular document or material produced is for Attorney’s Eyes Only and

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1 is so designated;

2                         (c) experts and consultants to whom disclosure is reasonably necessary  
3 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
4 (Exhibit A);

5                         (d) the court, court personnel, and court reporters and their staff;

6                         (e) copy or imaging services retained by counsel to assist in the  
7 duplication of confidential material, provided that counsel for the party retaining the copy or  
8 imaging service instructs the service not to disclose any confidential material to third parties  
9 and to immediately return all originals and copies of any confidential material;

10                         (f) during their depositions, witnesses in the action to whom disclosure is  
11 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
12 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

13 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
14 material must be separately bound by the court reporter and may not be disclosed to anyone  
15 except as permitted under this agreement;

16                         (g) the author or recipient of a document containing the information or a  
17 custodian or other person who otherwise possessed or knew the information.

18                         4.3 Filing Confidential Material. Before filing confidential material or discussing  
19 or referencing such material in court filings, the filing party shall confer with the designating  
20 party to determine whether the designating party will remove the confidential designation,  
21 whether the document can be redacted, or whether a motion to seal or stipulation and  
22 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be  
23 followed and the standards that will be applied when a party seeks permission from the court  
24 to file material under seal.

25 **5. DESIGNATING PROTECTED MATERIAL**

26                         5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
27 party or non-party that designates information or items for protection under this agreement

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

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801 SECOND AVENUE, SUITE 1210  
SEATTLE, WASHINGTON 98104  
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1 must take care to limit any such designation to specific material that qualifies under the  
 2 appropriate standards. The designating party must designate for protection only those parts  
 3 of material, documents, items, or oral or written communications that qualify, so that other  
 4 portions of the material, documents, items, or communications for which protection is not  
 5 warranted are not swept unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 7 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 8 unnecessarily encumber or delay the case development process or to impose unnecessary  
 9 expenses and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it  
 11 designated for protection do not qualify for protecting, the designating party must promptly  
 12 notify all other parties that it is withdrawing the mistaken designation.

13       5.2     Manner and Timing of Designations. Except as otherwise provided in this  
 14 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 15 ordered, disclosure or discovery material that qualifies for protection under this agreement  
 16 must be clearly so designated before or when the material is disclosed or produced.

17           (a)     Information in documentary form: (e.g., paper or electronic documents  
 18 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 19 proceedings). The designating party must affix the word "CONFIDENTIAL" to each page  
 20 that contains confidential material. If only a portion or portions of the material on a page  
 21 qualifies for protection, the producing party also must clearly identify the protected portion(s)  
 22 (e.g., by making appropriate markings in the margins).

23           (b)     Testimony given in deposition or in other pretrial proceedings: the  
 24 parties and any participating non-parties must identify on the record, during the deposition or  
 25 other pretrial proceeding, all protected testimony, without prejudice to their right to so  
 26 designate other testimony after reviewing the transcript. Any party or non-party may, within  
 27 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,

KEATING, BUCKLIN & McCORMACK, INC., P.S.

ATTORNEYS AT LAW  
 801 SECOND AVENUE, SUITE 1210  
 SEATTLE, WASHINGTON 98104  
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 FAX: (206) 223-9423

1 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party  
2 desires to protect confidential information at trial, the issue should be addressed during the  
3 pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent  
5 place on the exterior of the container or containers in which the information or item is stored  
6 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
7 protection, the producing party, to the extent practicable, shall identify the protected  
8 portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
10 to designate qualified information or items does not, standing alone, waive the designating  
11 party's right to secure protection under this agreement for such material. Upon timely  
12 correction of a designation, the receiving party must make reasonable efforts to ensure that  
13 the material is treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation  
16 of confidentiality at any time. Unless a prompt challenge to a designating party's  
17 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
18 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party  
19 does not waive its right to challenge a confidentiality designation by electing not to mount a  
20 challenge promptly after the original designation is disclosed.

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
22 regarding confidential designations without court involvement. Any motion regarding  
23 confidential designations or for a protective order must include a certification, in the motion  
24 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
25 conference with other affected parties in an effort to resolve the dispute without court action.  
26 The certification must list the date, manner, and participants to the conference. A good faith  
27 effort to confer requires a face-to-face meeting or a telephone conference.

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1           6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
 2 intervention, the designating party may file and serve a motion to retain confidentiality under  
 3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden  
 4 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
 5 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and  
 6 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
 7 continue to maintain the material in question as confidential until the court rules on the  
 8 challenge.

9       7. PROTECTED MATERIAL SUBPOENAED OR ORDER PRODUCED IN OTHER  
 10      LITIGATION

11       If a party is served with a subpoena or a court order issued in other litigation that  
 12 compels disclosure of any information or items designated in this action as  
 13 “CONFIDENTIAL,” that party must:

14       (a)     promptly notify the designating party in writing and include a copy of the  
 15 subpoena or court order;

16       (b)     promptly notify in writing the party who caused the subpoena or order to issue  
 17 in the other litigation that some or all of the material covered by the subpoena or order is  
 18 subject to this agreement. Such notification shall include a copy of this agreement; and

19       (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
 20 the designating party whose confidential material may be affected.

21       8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22       If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
 23 confidential material to any person or in any circumstance not authorized under this  
 24 agreement, the receiving party must immediately (a) notify in writing the designating party  
 25 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of  
 26 the protected material, (c) inform the person or persons to whom unauthorized disclosures  
 27 were made of all the terms of this agreement, and (d) request that such person or persons

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW  
 801 SECOND AVENUE, SUITE 1210  
 SEATTLE, WASHINGTON 98104  
 PHONE: (206) 623-8861  
 FAX: (206) 223-9423

1 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as  
2 Exhibit A.

3 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
4 **MATERIAL**

5 When a producing party gives notice to receiving parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
8 provision is not intended to modify whatever procedure may be established in an e-discovery  
9 order or agreement that provides for production without prior privilege review. The parties  
10 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

12 Within 60 days after the termination of this action, including all appeals, each  
13 receiving party must return all confidential material to the producing party, including all  
14 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate  
15 methods of destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
17 documents filed with the court; trial, deposition, and hearing transcripts; correspondence;  
18 deposition and trial exhibits; expert reports; attorney work product; and consultant and expert  
19 work product, even if such material contains confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until  
21 a designating party agrees otherwise in writing or a court orders otherwise.

22 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

23  
24 CEDAR LAW PLLC

25  
26 DATED: December 16, 2020

*s/Shannon McMinimee (email authorization)*

Shannon McMinimee, WSBA #34471

Whitney Hill, WSBA #53715

Attorneys for Plaintiff KEATING, BUCKLIN & MCCORMACK, INC., P.S.

1                   1001 Fourth Avenue, Suite 4400  
2                   Seattle, WA 98154  
3                   Phone: 206-607-8277  
4                   Fax: 206-237-9101  
5                   Email: [shannon@cedarlawpllc.com](mailto:shannon@cedarlawpllc.com);  
6                   Email: whitney@cedarlawpllc.com  
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8                   KEATING, BUCKLIN & MCCORMACK,  
9                   P.S. INC.  
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11                  DATED: December 16, 2020

12                  \_\_\_\_\_  
13                  *s/Shannon Ragonesi*  
14                  Shannon M. Ragonesi, WSBA #31951  
15                  Attorney for Defendant  
16

17                  801 Second Avenue, Suite 1210  
18                  Seattle, WA 98104  
19                  Phone: 206-623-8861  
20                  Fax: 206-223-9423  
21                  Email: sragonesi@kbmlawyers.com  
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KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW  
801 SECOND AVENUE, SUITE 1210  
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PHONE: (206) 623-8861  
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7 DATED: December 18, 2020

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11 Marsha J. Pechman  
12 United States District Judge  
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ATTORNEYS AT LAW  
801 SECOND AVENUE, SUITE 1210  
SEATTLE, WASHINGTON 98104  
PHONE: (206) 623-8861  
FAX: (206) 223-9423

## **EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on \_\_\_\_\_ [date] in the case of *Elicia Kneadler v. Auburn School District*, Case No. 20-CV-01008 MJP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed:

Printed name:

Signature: